IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.77/2006
Rajendra Kumar & Ors. Vs. Narpatilal

Against judgment & decree dated 15.12.2005 passed by Additional District Judge, Banswara in Civil Revision Petition No. 01/2005 – Rajendra Kumar & Ors. Vs. Narpatilal.

DATE OF JUDGMENT: 12th May 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. M.C. Bhoot for appellants.
Mr. R.K. Thanvi for respondent.

BY THE COURT:

This appeal under Sec. 22 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 read with Sec.96 of the Civil Procedure Code, 1908 has been filed against the judgment and decree passed by learned District & Sessions Judge, Banswara passed in Civil Revision No.1/05 affirming the eviction order passed by the learned Additional District Collector, Banswara dated 13.05.1997 in Application No.1/97.

Succinctly stated, the facts giving rise to this appeal are that the respondent herein, an army personnel, who was retired in the year 1965, is owning immovable property in the district Banswara, which is on rent with the appellant-petitioners. He moved an application under Sec. 16 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (to be referred hereinafter as 'the Act') before the District Collector stating therein that he being a retired army official, in view of provisions of Sec.16 of the Act, on account of personal need and necessity of the premises, is entitled to get the premises vacated. It was also stated in the application that previously an application was filed but the same was rejected on technical ground and on a revision being filed before the District Judge he was permitted to file an application afresh and thereafter he filed a fresh application. The notices of the applications were given to the appellant-petitioners, who denied personal and bonafide need of the non-petitioner-respondent for the premises and stated that since the earlier application was rejected, the

subsequent application was not maintainable and barred by the principle of res-judicata. It was also stated that the fact of retirement date was not correctly mentioned and the certificate attached by the non-petitioner in relation to the retirement, as conclusive proof for the need of the premises, was not sufficient for getting the premises back under the provisions of Sec.16 of the Act. The matter came to be decided by the learned Additional District Collector vide its judgment and decree dated 13.05.1997 passing the order of eviction. On a revision petition being filed before the District Judge, it was transferred to the Additional District Judge, who after hearing the parties, affirmed the judgment and decree awarded by the learned Additional District Collector, hence the present appeal has been filed under Sec.22 of the Act.

The controversy in the present matter revolves around Sec. 16 of the Rent Act. It is pertinent to note here that Sec. 16 was introduced in the Act after an amendment was brought in the Rent Act, 1987 which is a

special provision. Under this provision, the army officials have been made entitled for a special treatment in relation to getting their premises vacated after their retirement. The restriction which has been imposed is that a certificate is required by the competent authority in this regard to show that the official retired from army is in need of the premises. Such certificate is a conclusive proof in relation to the evidence of the need. Sec.16 of the Act is as follows:

> "16. Right of landlord to recover immediate possession in certain cases- (1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force or in any contract or usage, a landlord who was a member of the armed forces of the Union, his widow or his other legal representative shall, on an application being made in this behalf, be entitled to obtain an immediate order of ejectment of the tenant from the premises let out by such member and to recover immediate possession thereof on any of the following grounds, namely:-
>
> (a) that he has retired from service (which term shall include compulsory or voluntary retirement-
>
> (i)within a period of one year prior to the date of commencement of the Rajasthan Premises (Control of Rent and Eviction)(Amendment) Act, 1987, hereinafter in this section referred to as the said Act, or, as the case

may be, the date of making of such application; or

(ii)at any time prior to the commencement of the said Act subject to there being no agreement of lease in writing concerning such premises subsisting at the time of making such application and such premises having not been let out to the present tenant on or after the date of such retirement;

and that such premises are required for the use and occupation of himself or his family members; or

(b) that she is a war widow of a member of the armed forces of the Union and such premises are required for the use and occupation of such war widow; or

(c) that he is a legal representative (not being a war widow) of a member of the armed forces of the Union and such member has died during the course of employment within a period of one year prior to the date of commencement of the said Act or, as the case may be, the date of making of such application and that such premises are required for the use and occupation of such legal representative:

Provided that where the possession of the premises is so recovered and such premises are not occupied for a period of three months from the date of such recovery for other than bonafide reasons or are again let out within a period of three years from such date the tenant ejected from such premises shall on an application being made in this behalf to the Magistrate making the order of ejectment be entitled to the

restoration of possession of such premises to him on the original terms and conditions and the landlord shall be liable to such fine not exceeding two thousand rupees as such Magistrate considers reasonable.

(2) Nothing in sub-sec. (1) shall be construed as conferring a right on a landlord owning in the same city or town two or more premises to recover the possession of more than one of them. The landlord shall in that case indicate the premises of which he intends to recover possession from the tenant.

(3) A certificate issued by the Head of the service in which the member of the armed forces was last employed or by his Commanding Officer to the effect that such member or his war widow or his other legal representative requires the premises for the use and occupation of himself or herself or the family members of such members or on any of the grounds specified in clause (a) or clause (b) or clause (c) of sub-section (1) shall be conclusive evidence of the facts stated therein.

(4) (a) Every application by a landlord for ejectment of his tenant on any of the grounds specified in sub-section (1) shall be made to the District Magistrate having jurisdiction in the area where the premises are situate and it shall contain the following particulars namely:-
(i) the names and particulars of the landlord and the tenant;
(ii) sufficient description of the premises from which the tenant is to be ejected; and
(iii) the ground of eviction

(b) A copy of certificate obtained by the landlord under sub-sec.(3) shall be attached to the application.

(c) The application shall be verified in the manner prescribed for verification of a plaint under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(5)(a) The District Magistrate shall issue notice of every application referred to in sub section (4) to the tenant fixing a date for his appearance. The District Magistrate shall in addition to and simultaneously with the issue of such notice also issue a notice to be served by registered post, acknowledegment due, addressed to the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the notice in a newspaper having circulation in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purported to have been signed by the tenant or his agent is received by the District Magistrate or the registered article containing the notice is received back with an endorsement purported to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article, the District Magistrate may declare that there has been a valid service of the notice.

(6)The tenant, on whom the notice has been served (whether in the ordinary way or by registered post), shall not be entitled to

contest the application for eviction unless he files an affidavit stating the grounds on which he seeks to contest such application and obtains leave from the District Magistrate as hereinafter provided In default of his appearance in pursuance of the notice or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to have been admitted by the tenant and the District Magistrate shall forthwith make an order for ejectment of the tenant on the ground mentioned in the application.

(7) The District Magistrate may grant to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for ejectment on any of the ground mentioned in the application.

(8) Where leave is granted to the tenant to contest the application, the District Magistrate shall immediately commence the hearing on the application and shall decide it, as far as practicable, within two months of such commencement.

(9) If the District Magistrate is satisfied that the ground on which ejectment is sought is correct, he shall make an order for ejectment of the tenant from the premises and for restoring immediate possession thereof to the landlord. If the District Magistrate is not satisfied regarding the correctness of the ground, he shall dismiss the application.

(10) If the District Magistrate allows the application and makes an

order for ejectment of the tenant, he shall take immediate and suitable steps for the ejectment of the tenant from the premises and for the restoration of possession thereof to the landlord within a period of forty-five days and for that purpose may use or cause to be used such force as may be necessary.

(11) No appeal shall lie against an order for ejectment of the tenant made by the District Magistrate under this section:

Provided that the District Judge for the purpose of satisfying himself that an order made by the District Magistrate under this section is according to law may call for the record of the case within thirty days of the order and make such order in respect thereof as he thinks fit.

(12) Where no application has been made to the District Judge in revision, the District Magistrate may exercise the powers of review in accordance with the provisions of order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(13) Where a landlord exercises the right conferred on him by sub-section (1), no compensation shall be payable by him to the tenant or any person claiming through or under him and no claims for such compensation shall be entertained by any court or other authority:

Provided that where the landlord had received-

(a) any rent in advance from the tenant, he shall, within a period of ninety days from the date of recovery of possession of the premises by him,

refund to the tenant such amount as represent the rent payable for the unexpired portion of the contract, agreement or lease; or

(b) any other payment from the tenant, he shall within the period aforesaid, refund to the tenant a sum which shall bear the same proportion to the total amount so received as the unexpired portion of the contract or agreement or lease:

Provided further that if any default is made in making any refund as aforesaid, the landlord shall be liable to pay simple interest at the rate of twelve percent per annum on the amount which he has omitted or failed to refund.

(14) The District Magistrate may on an application having been made to him under sub section (4), proceed further himself or make over such application to an Additional District Magistrate and dispose it of himself. The Additional District Magistrate shall have all the powers of a District Magistrate for proceeding with the case in accordance with this section.

(15) Where a suit, appeal or other proceeding instituted or filed by a landlord in the matter relating to the ejectment of a tenant is pending in a court on the date of commencement of the said Act and such landlord becomes entitled to make application under this section, he may make such application and shall immediately inform such court in writing of having made such application. The suit, appeal or other proceeding shall thereupon be stayed by the court till the application is not finally decided under sub section (8) and shall, on

> an order of ejectment being made and to the extent of the relief granted under the said sub section, abate or the stay shall, on the application being dismissed by the District Magistrate under the said sub section, be vacated."

The preliminary objection raised by the learned counsel for the respondent is that the decision of the District Judge upholding the order of eviction by the judgment passed by the Additional Collector in an appeal treating it as revision cannot be challenged in an appeal filed under Sec.22 of the Act read with Sec.96 of the CPC. The further contention of the learned counsel is that Sec.16 is a complete provision in itself in the Act, as would appear, it provides remedy by way of filing revision in relation to the orders passed by the Additional District Collector or District Collector to the District Judge, and if there is no further provision to challenge such judgment and decree by appeal to High Court, then such matters are not liable to be appealed under Sec.22 of the Act. According to the learned counsel, Sec.16 being special in nature and complete in itself, unless there is

a specific provision for filing revision, appeal etc., till then no appeal or revision can be said to be maintainable.

On the other hand, it has been contended that Sec.22 makes a mention that all orders, judgments and decrees passed under the Act shall be appellable, therefore, appeal is maintainable. It has further been contended that a person cannot be remediless and Sec.22 when gone through would go to show that the appeal with the help of Sec.96 is maintainable. The contention of the learned counsel is that the learned District Judge while exercising powers of revision under sub-sec.(11) of Sec.16 of the Rent Act does not act as a persona designata but a civil court subordinate court to the High Court, as such, revision would lie before this Court, however, if the present appeal is not at all considered to be maintainable then the same may be treated as a revision petition. In support of his contention, the learned counsel has placed reliance on the decisions reported in AIR 1977 J&K 38 (Badri Nath Gupta Vs. Estates Officer)

and 2002 (5) SCC 510 – ITI Limited Vs. Simens Public Communications Network Limited)

I have considered the rival submissions made before me.

After carefully considering the arguments advanced before me and perusal of Sec.16 of the Act, it becomes absolutely clear that Sec.16 of the Act confers special status to those landlords who have served in the armed forces. The provision details the complete procedure to be adopted. At the initial stage, such matters are to be dealt with by the District Collector/Addl. District Collector, on application being filed under Sec.16 of the Act. The District Collector has been conferred with the power to transfer such application to the Additional District Collector to decide the same by adopting summary procedure. The Additional Collector, while considering such applications shall be entitled to exercise the powers of the District Collector and pass appropriate orders in case it is satisfied that a case is made out for passing order of

eviction. It further appears that if a person is dissatisfied with the order of the Additional District Collector, then under Sec.16(11), revision can be entertained by the District Judge for the purposes of satisfying the legality of the order passed by the District Collector. Sec.16(11) also prescribes that no appeal shall lie against ejectment orders and in case the matters are not agitated before the District Judge in revision then under Sec.16(12) a review petition can be entertained by the District Collector. Thus, there is no difficulty in coming to the conclusion that Sec.16 is a complete code in itself where no appeal has been provided under Sec.16 but a revision has been provided under Sec.11 before the District Judge and in case, no revision is filed then review lies before the District Magistrate.

The contention of the learned counsel for the appellant has been that the present appeal is maintainable with the help of Sec.96 of the CPC because an appeal against original decree has been provided under Sec.96 of the

CPC. The contention of the learned counsel appears to be without substance for the reason that in the instant case, the order of eviction was passed under Sec.16 of the Rent Act and in this very Sec.16 it has been provided that no appeal shall lie against an order of ejectment passed under Sec.16 but only a revision would lie. Sec.16, which starts with a non-obstante clause, when seen as a whole, it appears that its provisions are applicable for the purposes of deciding the matters arising out of Sec.16 and states that anything contrary to the provisions shall have no effect as far as provisions of this Sec.16 are concerned whereas a perusal of Sec.96 CPC reveals that it has saved all the provisions contained in any other law elsewhere or even in the Code of Civil Procedure itself. Thus, in my humble opinion, an appeal filed under Sec.22 of the Rent Act read with Sec.96 of the CPC particularly in such matters where revision filed against the order of eviction passed under Sec.16 of the Rent Act has been dismissed, no appeal shall lie against the order passed in revision.

Now the other contention which is required to be examined is as to whether in view of the authorities cited before me whether a revision would lie before this Court?

It is to be seen that while discussing the provisions contained in Sec. 16 & 22 of the Act, it has been found that Sec.16 in the Rent Act was inserted by way of an amendment made in the year 1987, conferred special status/right to a landlord, who was a member of the armed forces of the Union, his war widow or other legal representatives to recover possession in certain cases. It has further been found that while any such matters comes for consideration before the District Magistrate then a duty is caste on him and he is required to immediately proceed in the matter to decide the same quickly keeping in mind the provisions contained in Sec.16 of the Act and it is his sole discretion to grant leave to defend to the tenant to be exercised judiciously. The orders passed regarding grant of leave to defend or refusal passed by the District Magistrate/ADM

are not revisable in a revision petition filed before the District Judge. The District Judge can only consider the matter if the eviction order is passed finally. My this view finds support from a decision rendered by this Court in the case of M.B. Rao Vs. Satish Augustin & Anr. Reported in 1995 DNJ (Raj.) 68 (S.B. Civil Writ Petition No. 2729 of 1994, decided on 29.11.1994) wherein the petitioner, an armed force employee moved a petition for ejectment in the year 1990. A notice was issued for appearance by the District Magistrate, Jodhpur to the tenant, who on appearance moved an application on 07.08.1990 for leave to defend under sub-sec.(6) of Sec.16 of the Act. The leave was refused by the District Magistrate on 04.12.1990. The revision filed against that order before the District Judge, Jodhpur was allowed on 03.08.1991 and leave to defend was granted. Thereafter, claim was filed by the tenant to which the petitioner desired to file a rejoinder. The request was allowed by the District Magistrate on 21.07.1992. This order again was challenged by way of revision before the learned District Judge and that revision

was allowed on 05.03.1993. It was directed by the District Judge that a reasoned order was required to be passed in the matter. It had been an objection before the District Judge that in view of provisions of Sec.16 of the Act he was having no jurisdiction to hear the revision petition particularly until and unless a final order was passed. This order was not challenged after remand and the learned District Judge granted the permission to file rejoinder. Again the order of District Magistrate was challenged by way of revision by the tenant before the District Judge and the same objections were raised before the District Judge but again the District Judge overruled the objection and held that revision petition against the impugned order was maintainable under sub-section (11) of Sec.16 of the Act. This order was passed on 19.03.1994. Against order dated 19.03.1994, the matter came up before this Court and this Court discussed the entire matter taking into consideration Sec.16 of the Act and also considered the revisional aspect. The Court observed clearly that the appeal was barred by sub-sec.(11) of Sec.16 and

further it was observed that the scope of revision is very restricted and limited. This Court in Para 31 further observed as under:

> "It is not understood as to how the learned District Judge proceeded ahead to give altogether a different meaning to a plain language used in the proviso and without caring to read the section and its object. I cannot restrain myself from noticing the most unfortunate part of the whole case as I find that the proceedings were initiated by the petitioner by filing an ejectment petition on 31.03.1990. The proceedings have not been permitted to proceed further because of the three orders having been challenged, entertained and set aside by the learned District Judge and the process has taken about 5 years. All these process goes to negative the intent of the Legislature and a valuable time has been lost because of the erroneous approach of the learned District Judge in the matter. As I read sub-section (11) of Section 16, the scope of revision has been made very restricted and limited. The learned District Judge has been given a power to send for the record and thereafter he shall find out whether the order of ejectment that has been passed is in accordance with law. He is permitted and can examine only the legality or illegality of the order and the matter is not permitted to be examined beyond this.

The Court in Para 32 further observed:

> "Though the earlier order passed by the learned District Judge granting leave to the respondent tenant has not specifically been challenged before me in this writ petition, but in view I have taken on the reading of this provision makes out that the said order could not be passed. Be that, as it may, since the petitioner landlord has not made any specific challenge to that order and the leave has been granted and on the strength of that order, thereafter the tenant has filed a claim and has been permitted to contest, I restrain myself to comment about it in these proceedings."

The position is almost similar in the present case wherein a retired defence personnel, who retired from Indian Navy after giving up long years of his life in the service of nation, despite special provisions in the Statute for recovery of possession and ejectment of the tenant from the premises let out, is fighting for getting the tenanted premises vacated since Jan 1993 from the day of filing application under Sec.16 of the Rajasthan Premises (Control of Rent & Eviction)

Act and has all these years suffered the agony of a long chain of proceedings because of the applications, revisions, transfer of case etc. before various authorities but the matter is still at the initial stage without any progress and the order passed by Additional District Judge on 13th May 1997 ordering eviction is yet to be materialized.

As has been discussed hereinabove and I have found that with the aid of Sec.96 CPC appeal is not maintainable, now the question which requires consideration is as to whether revision would lie?

In the authority relied upon by the learned counsel viz., Badri Nath Gupta Vs. Estates Officer (supra), the facts were that the petitioner against whom an order of eviction was passed by the Estates Officer under Sec.5 of the Public Premises (Eviction of Unauthorized Occupants), Act 1971, filed an appeal under Sec.9 of the Act before the District Judge, who transferred the same for

disposal to the Addl. District Judge and during the pendency of the appeal petitioner moved an application under Sec. 113 of the Civil Procedure Code with the prayer that since certain constitutional points were involved therefore the appeal was required to be referred to the High Court for decision. The Addl. District Judge while rejecting the application stated that whatever was stated in the application was already available in the appeal and further the case was not required to be decided in piecemeal so at the time of final disposal of the matter same shall be taken care of. This order was passed while rejecting the application on 19.06.1996. This order was challenged in revision before the Jammu & Kashmir High Court and one of the arguments in this case considered was in relation to the persona designata and the Court observed that the term 'persona designata' implies the appointment of a person or the selection capacity as opposed to his capacity as a member of a particular class and with a view to determine whether the appointment of a person has been made as persona designata or as a

particular member of a class, it is necessary to find out whether the person appointed has been appointed by his name only or has he been appointed because of occupation, profession or the post held by him.

In the instant case, thus, by virtue of the office of the District Judge, in the present case, revision would lie under sub-sec. (11) of Sec.16 of the Act and in my humble opinion, the District Judge while hearing the revision petition arising out of provisions contained in Sec.16 of the Rent Act cannot be said to be acting in the capacity as a persona designata because he hears the revision petitions in such matters being posted at a particular district.

In another case relied upon by the learned counsel i.e. ITI Limited Vs. Simens Public Communications Network Limited(supra), the Hon'ble Apex Court in the facts and circumstances of the case observed that exclusion of jurisdiction by a statute can only be by express words and cannot easily be

interfered merely because the subordinate court exercises the special jurisdiction under special act.

In view of what has been discussed hereinabove, I am of the opinion that once the appeal has been prohibited under the provisions of Sec.16 of the Act and only a revision petition has been provided then an order passed in a revision petition cannot further be a matter of revision. I am further of the opinion that since in the present case powers of revision having been already exercised, a revision would not lie unless it is specifically provided.

For the reasons aforesaid, I do not find any substance in the argument of the learned counsel for the appellant that in case the appeal is not considered to be maintainable then revision would lie and the appeal filed under Sec.22 of the Rent Act, 1950 read with Sec.96 of the CPC may be treated as revision petition.

In view of what has been discussed hereinabove, I do not find any merit in this appeal.

In the result, the appeal stands dismissed as not maintainable.

(SATYA PRAKASH PATHAK)J.

/jpa